

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JUNIOUS NIELSEN,

Plaintiff,

- against -

J.C. PENNY COMPANY, INC.,

Defendant.
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ORDER

23-CV-5619 (JGLC) (JLC)

JAMES L. COTT, United States Magistrate Judge.

Pro se plaintiff Junious Nielsen has moved both for a default judgment (Dkt. No. 41) and for summary judgment (Dkt. Nos. 39, 47, 48), as defendant, J.C. Penny Company, Inc. (“JCPenney”), has not appeared in this action to date.

JCPenney is ordered to respond to these motions by **April 17, 2024**.

The Court has determined that JCPenney is a party in at least one other case in this District, *Amarte USA Holdings, Inc., v. Bergdorf Goodman LLC et al.*, No. 1:24-CV-883 (AS) (“*Amarte*”).¹ Counsel for JCPenney has entered an appearance in that case. Dkt. Nos. 47, 50. In order to ensure that JCPenney has notice of Nielsen’s lawsuit, Nielsen is ordered to contact counsel for JCPenney, identified below, by telephone or email, informing him of this lawsuit. Nielsen is to provide confirmation of his communications with JC Penney to the Court by **March 29, 2024**.

¹JCPenney is named as Penney OpCo, LLC in the *Amarte* case.

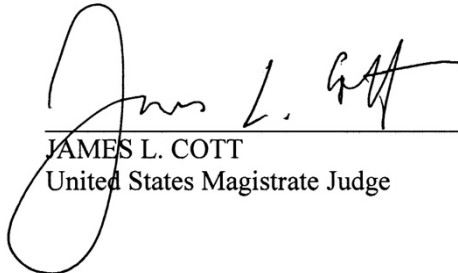
Counsel of record for JCPenney in *Amarte* is:

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The Court is issuing this order because it is trying to ensure that J.C. Penney has notice of this lawsuit. From the record, there are still questions about whether Nielsen has properly served the defendant, and the Second Circuit has established a “strong preference for resolving disputes on the merits.” *City of New York v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 129 (2d Cir. 2011). It is well-settled that “defaults are generally disfavored and are reserved for rare occasions.” *Enron Oil Corp. v. Diakuhara*, 10 F.3d 90, 96 (2d Cir. 1993).

SO ORDERED.

Dated: March 20, 2024
New York, New York



JAMES L. COTT
United States Magistrate Judge

A copy of this Order has been mailed and emailed to Thomas Williams, Esq., and Robert Shapiro, Esq., by the Court.